THE LAW OF ARREST IN CIVIL AND CRIMINAL ACTIONS. By Harvey Cortlandt Voorhees. Second Edition. Boston: Little, Brown, and Company. 1915. pp. xliii, 287.

The first edition of this handy manual was printed in 1904; and the author then expressed the wish of producing "a work so exhaustive that the profession might feel justified in pronouncing it a standard authority on the subject with which it deals." The success of the book has, in some degree at least, corresponded with this aspiration; it "is now in common use in police departments, and law offices." In the preface to the second edition the author lays great (but certainly not too great) stress upon the usefulness of the book to police officers. One may fairly add, however, that it is an excellent elementary summary of the law of arrest and imprisonment for the student and the lawyer. Its claim to be regarded as a standard and exhaustive treatise is rather too broad.

An increase of about one-fifth in the matter of the book is largely caused by the addition of new citations. The number of cases has increased by about one-fourth.

A few errors or misleading statements have been noted. On page 100 it is said that under a hue and cry, a private person may make an arrest even though it should subsequently be shown that no felony had been committed. For this proposition, the case of *People* v. *Lillard*, 18 Cal. App. 343, is cited. This was not a case of hue and cry, nor did the court mention those words. The hue and cry, properly so called, has of course never existed on this continent. In that case it was an admitted fact that the felony had been committed by the deceased and it was clear that the defendant knew, or had reasonable grounds to believe, that this was the case. The subsequent statement on page 136, citing the same case, that an arrest by hue and cry is not obsolete, is certainly unfounded. On page 131, the statement that any private person, present when a felony is committed, is bound by the law to arrest the felon, has probably never been true in this country. It is certainly not true to-day. In no American case is there even a dictum to that effect, so far as the reviewer has found, except one or two loose statements that it is the duty of a bystander to arrest a felon, and therefore he may justify making the arrest. In these passages "duty" is unquestionably used in the same sense in which it is said to be the duty of a person to defend himself. In the note on page 115, the statement with respect to an officer arresting without warrant for a suspected misdemeanor, is based on the rather unusual provision of the New York Code of Criminal Procedure. The statement is misleading as a statement of general law.

These examples are drawn from one chapter only, but that is the most important one in the book. J. H. B.

RAILROAD RATE REGULATION. By Joseph Henry Beale and Bruce Wyman. Second Edition by Bruce Wyman. New York: Baker, Voorhis and Company. 1915. pp. xcvi, 1210.

In 1906, as many important amendments to the Interstate Commerce Act, known as the Hepburn Amendments, were about to take effect, Messrs. Beale and Wyman issued their first edition of Railroad Rate Regulation. Of course it was not possible to do more then than barely to call attention to the important changes produced in the Interstate Commerce Act by the important amendments of 1906.

Again in 1910 Congress gave long and serious consideration to the Interstate Commerce Act as amended in 1906, and again very important amendments resulted.

Again in 1912, by the Panama Act, the Interstate Commerce Commission was given certain additional powers, and in 1913 the Commission was given the power to value the property owned or used by every common carrier subject to its jurisdiction.

In addition to the additional powers given the Interstate Commerce Commission by the extensive amendments mentioned since the first edition of Beale and Wyman on Railroad Rate Regulation, the Commission and the courts have made many most important decisions upon questions that were unsettled when the first edition was issued. For instance, the decisions of the Commission as to when railways can and when they cannot increase their rates, in the celebrated rate cases involving enormous amounts of money, have attracted public attention and discussion because of their great importance.

So, too, recent decisions of the Commission and the courts as to when so-called industrial railways are common carriers, and as such entitled to the rights of common carriers, even though such industrial railways are substantially owned by industries largely served by them, have disclosed a difference of opinion between the Commission and the courts that has provoked not a little discussion among members of the bar and in the public press. Some of these decisions of the Commission, too, have resulted in business delay and confusion that have caused very serious criticism of the Commission among business men and in the public press. The truth is, the Commission's jurisdiction has become so extensive and its burdens so great, that it naturally tries to decide more in a single case than it can well decide, as the courts hold, and therefore it is that it occasionally finds itself compelled to reconsider its own decision, as it did in the Industrial Railways Case, after the decisions of the Supreme Court in the Tap Line cases, and as it did in the Eastern Rate cases after it had been subjected to severe general and public criticism for its first decision and the railways had obtained a rehearing.

Nor is this all. In 1906 many of the states had no commissions worthy of the name. The result was that the powers of a majority of the then existing state commissions were so inadequate that in intrastate matters the railways in most of the states were almost a law unto themselves.

In 1907 Governor Hughes in New York showed that the very important railway business of that state was substantially unregulated by its Railway Commission, and also that other public-service commissions should be subjected to state regulation. Therefore, in spite of strenuous opposition from railways, he was the leader in bringing about legislation providing for two public-service commissions in that state, one in New York City and one "up-state," as it is called, to regulate the services and the charges of not only the railways, but of substantially all public-service corporations of the state of New York. As commissioners to serve upon these commissions, he selected some of the most able men of the state, and so well did they serve the state upon these commissions that almost all complaint of intrastate railway service and other corporation service disappeared, and many other states took up the legislation of New York and from it prepared similar acts adapted to the needs of the various states.

In this way such great states as New York and Pennsylvania, not to mention others, for the first time began adequately to regulate intrastate service of railways and public-service corporations. So rapidly did the state law regulating the intrastate service of public-service corporations develop after the important changes made in that law in the state of New York, under the leadership of Governor Hughes, that in 1911 Mr. Wyman gave us his work of two volumes upon Public Service Corporations, which substantially covers the common-law ground covered by the first edition of Beale and Wyman in their work upon Railroad Rate Regulation, and also covers, in addition thereto, the statutory provisions and changes of the various states, whereby the various

states regulate the services of public-service corporations within their boundaries. In issuing this work upon public-service corporations, Mr. Wyman naturally thus took from the work of Beale and Wyman common-law provisions more germane to public-service corporations within the states than to the matter of railway rate regulation by the federal government, because the federal government does not regulate railway rates by virtue of the common law, but, instead, regulates railway rates by virtue of the federal Constitution, giving it power to regulate interstate commerce, thus giving Congress the power to pass the Interstate Commerce Act and the various amendments thereto.

The consequence of the important changes thus made in both federal and state legislation regulating railway rates and the services of public-service corporations generally, and of the important decisions made by the Interstate Commerce Commission and the various state commissions, and the state and federal courts, touching these important subjects, since the first edition of Beale and Wyman upon Railroad Rate Regulation in 1906, is that a work issued July 1, 1906, has become somewhat out of date, and to be valuable to either the courts or the profession it has been necessary to rewrite it, omitting from it the bulk of the common-law matter more strictly applicable to intrastate business and adding to it entire chapters dealing with important amendments made from time to time to the Interstate Commerce Act, and also proper comment upon important decisions made from time to time by the Interstate Commerce Commission and by the federal courts.

The second edition of Beale and Wyman, which has just come from the press, has been prepared by Mr. Wyman, who has profited by his experience as an author, as a practicing lawyer and as a law teacher, from July, 1906, to the present time, and has given us the benefit of his study and experience in the changes and additions made in the structure of the first edition. We have very carefully examined the second edition, and, so far as we have discovered, the second edition is a thorough, accurate and reliable statement of the law to March, 1915, when it issued from the press. Of the second edition, therefore, we may repeat with still greater confidence what we said of the first edition in a review of that edition. We then said (20 HARV. L. REV. 340, etc.):

"The present general demand for such a work is largely due to the Interstate Act Amendments of 1906. . . .

"Historically and legally, this clearly appears. In 1787 Congress was granted the power 'to regulate commerce' (interstate). So far as Congress was concerned, this power remained almost unexercised until a century later, or 1887, when the first Interstate Commerce Act was passed. This act was passed because the attempts of the states to regulate the conduct of railways by the so-called Granger legislation and legislation of that character, in the early seventies, were nullified as to interstate traffic, October 25, 1886, by the necessary ruling of the Supreme Court in *Wabash Ry. Co.* v. *Illinois*, 118 U. S. 557, 577, that regulation of interstate traffic by railroads 'must be of a national character, and the regulation can only appropriately exist by general rules and principles which demand that it should be done by the Congress of the United States, under the commerce clause of the Constitution. . . .'"

Without quoting further touching the passage of the Interstate Commerce Act and its amendments as to the first edition, we then said:

"The point of view of the authors evidently is, to use their own words, that the railroad problem is to be dealt with for the present on the basis of existing statutes and decisions, whereby to 'control . . . rates and practices of the railroads for public good.' To throw light on the subject, they consider, among other topics, parliamentary regulation of rates, the persistence of state regulation, the theory of *laissez faire*, the growth of public employments, the power of eminent domain, the grant of exclusive franchise, monopoly as a ground for

regulating public callings, requisites of common carriage, the transportation necessary, public business of common carriers, common carriers' right to compensation, primary duties of common carriers, excuses for refusal to serve, strikes, right to protect their own interests, limitations of their charges, right to return on capital, rate of return on capital, right to operating expenses, reasonableness of particular rates, elements involved in reasonable rates, classification of commodities, the effect of length of transportation upon rates, preventing discrimination between competitors and localities, Interstate Commerce Acts of England, the Granger and other state statutes, the Interstate Commerce Acts of 1887, the Elkins Act, and the Interstate Commerce Act Amendments of 1906. Even the regulations of the Commission with reference to printing and publishing schedules of rates, and the procedure before the Commission, and in the courts, are considered.

"The consideration of these topics is in the main most satisfactory, this being particularly true of the difficult one of discrimination in all its forms. . . .

"It is a pleasure carefully to examine a work that sustains such examination so well, to find it both comprehensive and acute, to note the accuracy of its learning, the convenience of its arrangement, the practical quality of its usefulness, and to commend it generally to the profession, which is bound to find such works much more necessary and useful in the future than they have been in the past."

The judgment of all who have used the first edition has justified us in the conclusion there reached, and we feel sure that the second edition will prove equally useful and reliable. A. M.

THE FORMAL BASES OF LAW. By Giorgio del Vecchio; translated by John Lisle, with introductions by Joseph H. Drake, Sir John McDonnell and Shepard Barclay. Boston: The Boston Book Company. 1914. pp. lvii, 412.

This book is an attempt to define the essential bases of law, the word "formal" being used in the sense of "essential." It was originally written in Italian and has been translated into philosophical English. At times Greek, German, Italian and Latin phrases are employed, without appreciably diminishing the clearness of the English text. It is with diffidence therefore that the reviewer ventures his personal belief as to the author's meaning.

It was said to have been the glory of Socrates that he brought philosophy from the clouds down to the affairs of daily life. Our author has apparently reversed the operation. He has taken the law which we find in daily life to the clouds, — and left it there. So far as the reviewer has been able to ascertain, the author's main thesis is a combination of Plato and Kant. From Plato he takes the thesis that the ideal of a thing exists before any attempt is made to give that thing a physical expression, and remains unaffected by the imperfections of any attempted physical expression of it. To express the thought in concrete form, the mathematical ideal of a circle existed before any attempt was made to draw a circle, and remains unaffected by the imperfections of any circle or circles which are actually drawn. But of course this ideal has no inherent power either to express itself or cause itself to be expressed. So to bring the ideal into existence something more is necessary. The principle which tends to give this ideal concrete expression the author takes from Kant. Kant in the categorical imperative defines and describes that something in human nature which makes man desire to do his duty and realize the ideal. In this the author finds the moving force which tends to realize the ideal of law. By combining this thesis of Kant with the Platonic thesis of the ideal the author discovers the essential bases of law.